

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT NO. 308 HON. CHARLES W. MC COY, JR., JUDGE  
4  
5  
6 RICHARD BOEKEN, )  
7 )  
8 PLAINTIFF, )  
9 )  
10 VS. ) CASE NO.  
11 8 ) BC226593  
12 PHILIP MORRIS, )  
13 )  
14 DEFENDANT. )  
15 \_\_\_\_\_ )  
16  
17 REPORTER'S TRANSCRIPT OF PROCEEDINGS  
18 TUESDAY, APRIL 24, 2001  
19  
20  
21  
22 VOLUME 22-B.  
23 PAGES 3545 THROUGH 3581.  
24  
25  
26 LISA RIDLEY, CSR NO. 5886  
27 CARMEN J. GARROD, CSR NO. 4009, RPR  
28 OFFICIAL COURT REPORTERS  
1 APPEARANCES:  
2  
3 FOR THE PLAINTIFF: LAW OFFICES OF MICHAEL J. PIUZE  
4 BY: MICHAEL J. PIUZE,  
5 ATTORNEY AT LAW  
6 11755 WILSHIRE BOULEVARD  
7 SUITE 1170  
8 LOS ANGELES, CALIFORNIA 90025  
9  
10 FOR THE DEFENDANT: ARNOLD & PORTER  
11 BY: MAURICE LEITER,  
12 JOHN CARLTON,  
13 AND ADAM LE BERTHON,  
14 ATTORNEYS AT LAW  
15 777 SOUTH FIGUEROA STREET  
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1 CHRONOLOGICAL INDEX  
2  
3 FOR THE DATE OF APRIL 24, 2001  
4  
5 VOLUME 22-B  
6  
7  
8 PLAINTIFF'S WITNESSES PAGE/VOLUME  
9  
10  
11 LEWAK, BERNARD  
12  
13 CROSS-EXAMINATION (CONT'D) BY MR. CARLTON 3545  
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1 EXHIBITS  
2  
3 FOR THE DATE OF APRIL 24, 2001  
4  
5 VOLUME 22 B  
6  
7  
8 EXHIBITS MARKED FOR IDENTIFICATION PAGE/VOLUME  
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10  
11 (NO EXHIBITS WERE OFFERED.)  
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1 CASE NUMBER: BC226593

2 CASE NAME: BOEKEN VS. PHILIP MORRIS  
3 LOS ANGELES, CALIFORNIA TUESDAY, APRIL 24, 2001  
4 DEPARTMENT NO. 308 HON. CHARLES W. MC COY, JR., JUDGE  
5 REPORTER: CARMEN J. GARROD, CSR NO. 4009  
6 TIME: 1:40 P.M.  
7 (APPEARANCES AS HERETOFORE NOTED.)  
8  
9 THE COURT: OUR JURY PANEL IS WITH US.  
10 THE WITNESS IS ON THE STAND.  
11 SIR, YOU UNDERSTAND YOU'RE STILL UNDER OATH?  
12 THE WITNESS: YES, I DO.  
13 THE COURT: THANK YOU, SIR.  
14 PROCEED, MR. CARLTON.  
15 MR. CARLTON: THANK YOU, YOUR HONOR.  
16  
17 BERNARD LEWAK, C.P.A.  
18 CALLED BY THE PLAINTIFF AS A WITNESS, HAVING BEEN  
19 PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER  
20 AS FOLLOWS:  
21  
22 CROSS-EXAMINATION (CONTINUED)  
23 BY MR. CARLTON:  
24 Q. MR. LEWAK, JUST TO RETURN FOR A MOMENT TO THE  
25 BALANCE SHEET THAT WE WERE TALKING ABOUT, THIS LISTS  
26 ASSETS, LIABILITIES AND EQUITY; RIGHT?  
27 A. THAT'S RIGHT.  
28 Q. AND SO THE EQUITY, ISN'T THAT REALLY BASICALLY  
3545  
1 THE NET WORTH OF NOVA L.L.C.?  
2 A. IT'S THE NET WORTH BASED UPON THE TRANSACTIONS  
3 FOR 1998.  
4 Q. AS OF THAT DATE, DECEMBER 31ST?  
5 A. RIGHT. I DON'T HAVE TRANSACTIONS IN THERE  
6 FROM PRIOR YEARS.  
7 Q. SO THAT WOULD BE ASSETS MINUS LIABILITIES?  
8 A. CORRECT.  
9 Q. I'D LIKE TO TURN TO THE 1997 TAX RETURN THAT  
10 YOU TALKED ABOUT.  
11 DO YOU HAVE A COPY OF THAT?  
12 A. YES, I DO.  
13 Q. AND DO YOU HAVE IT IN FRONT OF YOU?  
14 A. YES, I DO.  
15 Q. WHAT AMOUNT OF MONEY DOES THAT SHOW, IF  
16 ANYTHING, THAT MR. BOEKEN EARNED FROM NOVA L.L.C.?  
17 A. IT SHOWED THAT HE EARNED 230,000 OH SEVEN  
18 SEVEN FROM NOVA L.L.C.  
19 Q. \$230,000?  
20 A. CORRECT.  
21 Q. AND HAVE YOU SEEN A NOVA L.L.C. RETURN FOR  
22 1997?  
23 A. ARE YOU REFERRING TO A PARTNERSHIP RETURN,  
24 BECAUSE --  
25 Q. YES.  
26 A. -- THIS IS ALSO DESCRIBED AS NOVA L.L.C. ON  
27 THE SCHEDULE C.  
28 Q. A PARTNERSHIP RETURN. I'M SORRY.  
3546  
1 A. YES, I HAVE.  
2 Q. AND DO YOU HAVE THAT -- DO YOU HAVE A COPY OF  
3 THAT?  
4 A. I BELIEVE SO. LET ME FIND IT HERE. YES, I DO.  
5 Q. WHAT DOES THE NOVA L.L.C. PARTNERSHIP RETURN  
6 FOR 1997 SHOW AS ITS NET INCOME?

7 A. IT SHOWS A NET LOSS OF 25,305.  
8 Q. SO MR. BOEKEN'S RETURN SHOWED \$230,000 FROM  
9 NOVA L.L.C.?  
10 A. IT SHOWED \$230,000 ON ONE PAGE CALLED A  
11 SCHEDULE C.  
12 Q. HOW WAS THAT CHARACTERIZED?  
13 A. IT WAS CHARACTERIZED AS PROFIT OR LOSS FROM A  
14 BUSINESS IN THE NAME OF NOVA L.L.C. IN THE BUSINESS OF  
15 INDEPENDENT SALES.  
16 Q. AND YET NOVA L.L.C.'S RETURN SHOWED A \$25,000  
17 LOSS FOR THE SAME YEAR?  
18 A. THAT PARTNERSHIP RETURN SHOWS A LOSS OF 25,000  
19 FOR THE SAME YEAR.  
20 Q. ALL RIGHT.  
21 DO YOU HAVE AN EXPLANATION FOR THAT?  
22 A. NO, I DON'T. I DIDN'T PREPARE THE RETURN SO I  
23 DO NOT HAVE AN EXPLANATION.  
24 Q. THE 1992 RETURN THAT YOU TALKED ABOUT, I THINK  
25 YOU STATED MR. BOEKEN REFERENCED A NET INCOME OF \$234,389?  
26 A. 1992, \$234,389.  
27 Q. YOU WERE AWARE THAT HE FILED BANKRUPTCY IN  
28 JUNE OF 1992, WEREN'T YOU?  
3547

1 A. I'M AWARE THAT HE FILED BANKRUPTCY, BUT I  
2 DON'T KNOW WHAT YEAR HE FILED.  
3 Q. DO YOU HAVE ANY INFORMATION AS TO WHERE HE  
4 EARNED \$234,389 IN THAT YEAR?  
5 A. I'D HAVE TO LOOK AT THE TAX RETURN. I'M  
6 LOOKING AT MY LETTER, BUT I DON'T HAVE THE TAX RETURN FROM  
7 IT.  
8 Q. I SEE. OKAY. DO YOU HAVE IT WITH YOU?  
9 A. YES, I DO.  
10 I HAVE THE TAX RETURN WITH ME.  
11 Q. WHAT DOES IT SAY ABOUT THE SOURCE OF THAT  
12 INCOME?  
13 A. IT SHOWS THAT IT CAME FROM A SCHEDULE C, AGAIN  
14 FROM A BUSINESS CALLED RICHARD BOEKEN ENTERPRISES, AND IN  
15 THE DEVELOPMENT, SLASH, ENERGY PROPERTIES; AND IT SHOWED  
16 GROSS INCOME LESS EXPENSES FOR A NET INCOME OF \$234,389.  
17 Q. SO ACCORDING TO THE INFORMATION YOU HAVE THEN  
18 MR. BOEKEN MADE THAT AMOUNT OF MONEY IN THE SAME YEAR THAT  
19 HE FILED BANKRUPTCY?  
20 A. WELL, THIS IS THE INFORMATION I HAVE ON THE  
21 TAX RETURN. I DON'T KNOW WHAT YEAR HE FILED BANKRUPTCY.  
22 Q. ALL RIGHT.  
23 NOTHING FURTHER. THANK YOU, YOUR HONOR.  
24 THE COURT: THANK YOU, COUNSEL.  
25 MR. PIUZE: I'VE GOT SOME.  
26 (CONTINUED ON FOLLOWING PAGE.)

27 / / /  
28 / / /

3548

1 REDIRECT EXAMINATION  
2 BY MR. PIUZE:  
3 Q. WHAT DO YOU MEAN BY OVERDRAWN ON THE BOOKS?  
4 IS THAT A TERM OF ART FOR ACCOUNTANTS?  
5 A. OVERDRAWN ON THE BOOKS AS OPPOSED TO OVERDRAWN  
6 ON THE RECORDS OF THE BANK. THERE IS A DIFFERENTIAL.  
7 OVERDRAWN ON THE BOOKS MEANS THE CHECKS WERE  
8 PREPARED AND RECORDED ON THE BOOKS BUT NOT NECESSARILY  
9 ISSUED AND NOT YET CLEARED BY THE BANK.  
10 Q. SAY THAT DIFFERENTLY.  
11 A. IT MEANS THAT CHECKS HAD BEEN PREPARED AND

12 RECORDED AS CHECKS FOR THAT YEAR BUT NOT YET CLEARED THE  
13 BANK, SO THE BOOKS WILL SHOW A FIGURE OF A BANK BALANCE  
14 WHICH IS MAYBE OVERDRAWN, AND THE BANK DOESN'T HAVE THAT  
15 FIGURE BECAUSE THE CHECKS HAVE NOT YET BEEN PRESENTED FOR  
16 PAYMENT YET.  
17 Q. GOT IT. THE CHECKS WERE WRITTEN BUT NOT  
18 CASHED?  
19 A. CORRECT.  
20 Q. SO OVERDRAWN ON THE BOOKS DOESN'T MEAN  
21 OVERDRAWN?  
22 A. NOT OVERDRAWN AT THE BANK.  
23 Q. RIGHT.  
24 IS THAT RIGHT?  
25 A. THAT'S WHAT IT MEANS, IT'S NOT OVERDRAWN AT  
26 THE BANK, IT'S OVERDRAWN ON THE BOOKS.  
27 Q. I THINK THAT CAME UP IN REGARD TO SOMETHING  
28 YOU AND MR. CARLTON WERE TALKING ABOUT, A WASH. AND ALL OF  
3549  
1 THIS IS PARTIALLY OVER MY HEAD, AND I WANT TO GO THROUGH  
2 IT.  
3 I'LL PLUG YOU IN. THERE WAS \$481,000 FROM A  
4 NOVA PINON IN, AND THERE WAS \$440,000 OUT, AND YOU CALLED  
5 THAT A WASH.  
6 TO ME A WASH WOULD MEAN ZERO, BUT OBVIOUSLY  
7 THE ARITHMETIC DOESN'T ADD UP TO ZERO.  
8 A. BY "WASH" I MEAN THE MONEY WASHED THROUGH THE  
9 BANK ACCOUNT OF NOVA L.L.C. MONEY CAME IN, BUT A LESSER  
10 AMOUNT OF MONEY WENT OUT ON BEHALF OF THAT OTHER ENTITY.  
11 Q. WHAT YEAR ARE WE TALKING ABOUT HERE?  
12 A. WE'RE TALKING ABOUT 1998.  
13 Q. 1998 WAS THE YEAR WHERE YOU DID -- WHERE YOU  
14 PREPARED THE ACCOUNTING AT MY REQUEST?  
15 A. THAT'S CORRECT.  
16 Q. WHY NOT TAKE INTO ACCOUNT THE \$481,000 THAT  
17 CAME IN -- IT'S A HECK OF A LOT OF MONEY -- AND THE  
18 \$440,000 THAT WENT OUT?  
19 A. IT WASN'T INCOME OR EXPENSE OF NOVA L.L.C., IT  
20 WAS INCOME AND EXPENSE OF ANOTHER ENTITY.  
21 Q. WHAT?  
22 A. PARDON ME?  
23 Q. WHAT?  
24 A. WHY?  
25 Q. WHAT ENTITY?  
26 A. WHAT ENTITY? I'M SORRY. NOVA PINON PARTNERS.  
27 Q. WHAT'S THE DIFFERENCE?  
28 A. THEY ARE DIFFERENT ENTITIES. NOVA PINON HAS  
3550  
1 AN ENTIRELY DIFFERENT OWNERSHIP THAN NOVA L.L.C. DOES.  
2 Q. IT'S GETTING THICK.  
3 WHY DON'T YOU TELL THE JURY WHAT THE  
4 DIFFERENCE IS BETWEEN NOVA L.L.C., NOVA PINON, AND  
5 SOMEPLACE IN THERE I HEARD YOU MENTION J.P.K., PLEASE.  
6 A. OKAY. NOVA PINON IS A PARTNERSHIP THAT WAS  
7 FORMED BETWEEN NOVA L.L.C. WHICH HELD A 1 PERCENT INTEREST  
8 AND J.P.K. PARTNERS WAS THE OTHER PARTNER IN NOVA PINON  
9 WHICH HELD A 99 PERCENT INTEREST.  
10 Q. STOP RIGHT THERE, PLEASE.  
11 MR. AND MRS. BOEKEN OWNED NOVA L.L.C.?  
12 A. IT APPEARS THEY OWNED IT 50 PERCENT EACH.  
13 Q. SO MR. AND MRS. BOEKEN OWN 1 PERCENT OF NOVA  
14 PINON?  
15 A. CORRECT.  
16 Q. AND SOME OUTSIDE PARTNERSHIP OWNS 99 PERCENT

17 OF NOVA PINON?  
18 A. CORRECT.  
19 Q. THIS \$481,000, DOES THAT BELONG TO NOVA  
20 PINON?  
21 A. IT BELONGS -- IN MY OPINION IT BELONGS TO NOVA  
22 PINON.  
23 Q. AND THEREFORE \$4,800 OF THAT MONEY BELONGS TO  
24 MR. AND MRS. BOEKEN?  
25 A. I DON'T KNOW.  
26 Q. ISN'T THAT 1 PERCENT?  
27 A. WELL, IT'S 1 PERCENT, BUT IT MAY NOT  
28 NECESSARILY BE THE CAPITAL CONTRIBUTION THAT NOVA MADE TO  
3551  
1 THE NOVA PINON PARTNERSHIP. THEY MAY HAVE MADE A SEPARATE  
2 CONTRIBUTION. I DON'T KNOW.  
3 Q. \$481,000 IN, \$440,000 OUT?  
4 A. CORRECT.  
5 Q. WHAT DOES THAT LEAVE?  
6 A. \$41,000.  
7 Q. ISN'T THAT INCOME?  
8 A. I DIDN'T TREAT IT AS INCOME; I TREATED IT AS A  
9 LIABILITY, I.E., MONEY OWED BY NOVA L.L.C. TO NOVA PINON.  
10 Q. WHY CALL IT A WASH?  
11 A. WELL, IT'S NOT A WASH IN THE SENSE THAT THE  
12 TWO AMOUNTS EXACTLY OFFSET EACH OTHER, BUT THEY COME  
13 SOMEWHAT CLOSE TO OFFSETTING EACH OTHER.  
14 Q. THE FIRST PIECE OF PAPER WE SAW ON THE ELMO  
15 WHEN WE CAME BACK FROM LUNCH.  
16 A. ON THE WHAT?  
17 Q. ELMO. (INDICATING.)  
18 A. OKAY.  
19 Q. SCREEN.  
20 A. I DIDN'T KNOW YOU CALLED THAT "ELMO."  
21 Q. I COULD HAVE CALLED IT A CAPITAL CONTRIBUTION,  
22 BUT I FIGURED THAT WOULD BE TOO -- WHAT'S A CAPITAL  
23 CONTRIBUTION?  
24 A. A CAPITAL CONTRIBUTION IS AN INVESTMENT BY AN  
25 INVESTOR IN A VENTURE WHICH MAY BE A CORPORATION, IT MAY BE  
26 AN L.L.C., IT MAY BE A PARTNERSHIP, IT MAY BE A JOINT  
27 VENTURE, IT MAY BE ANY DIFFERENT TYPE OF NUMBER OF  
28 ENTITIES.  
3552  
1 Q. SO HERE WE GO BACK TO WHERE I WAS. THE PIECE  
2 OF PAPER THAT WAS DISPLAYED UP ON THE SCREEN RIGHT AFTER  
3 LUNCH WAS A BALANCE SHEET FOR NOVA AND IT SHOWED A MINUS  
4 \$103,000. DO YOU REMEMBER THAT?  
5 A. A MINUS 103-, YOU MEAN AS A NET WORTH?  
6 Q. YES.  
7 A. UH-HUH. OKAY.  
8 Q. IS THAT A BAD THING, NEGATIVE NET WORTH?  
9 A. IT MAY OR MAY NOT BE.  
10 Q. ALL RIGHT. I CAN GUESS WHY IT MAY BE.  
11 WHY DO YOU SAY IT MAY NOT BE?  
12 A. I'M SORRY, SAY THAT AGAIN. WHY IT MAY NOT BE?  
13 Q. YES.  
14 A. WELL, IT MAY SIGNIFY THAT THE COMPANY IS IN  
15 FINANCIAL TROUBLE OR IT MAY NOT.  
16 Q. WHY NOT?  
17 A. BECAUSE THERE MAY BE OTHER SOURCES OF INCOME  
18 OR CAPITAL WHICH COULD BE INVESTED SUBSEQUENT.  
19 Q. WELL, AT THE END OF DECEMBER 1998, IS THIS  
20 WHAT YOU PUT TOGETHER THEN, (INDICATING)?  
21 A. YES.

22 Q. AT THE END OF DECEMBER 1998, WHAT IS MINUS  
23 103-?  
24 A. IT SAYS TOTAL EQUITY, SO IT'S THE NEGATIVE NET  
25 WORTH OF THE TRANSACTIONS AS OF THAT DATE.  
26 Q. HOW CAN THAT BE GOOD?  
27 A. I DIDN'T SAY IT WAS GOOD. I SAID IT MAY OR  
28 MAY NOT BE GOOD.  
3553  
1 Q. I'M SAYING IT'S BAD.  
2 A. I DON'T KNOW.  
3 Q. YOU DON'T KNOW.  
4 SEE WHERE IT SAYS "TOTAL LIABILITIES" --  
5 A. YEAH.  
6 Q. -- MINUS 62?  
7 A. OH, THE LIABILITIES EXCEED THE ASSETS AT THAT  
8 POINT. THERE ARE NO ASSETS. THERE IS ONLY LIABILITIES.  
9 Q. SO AT THE END OF A YEAR FOR A SMALL BUSINESS,  
10 IF YOU SHOW A NEGATIVE NET WORTH, IS THAT GOOD?  
11 A. GENERALLY NOT.  
12 Q. WHAT DO YOU DO ABOUT IT?  
13 A. WELL, YOU EITHER BRING IN MORE CAPITAL OR YOU  
14 MAKE MORE MONEY AND WIPE OUT YOUR NEGATIVE NET WORTH.  
15 Q. WAS MR. BOEKEN BORROWING FROM THE BANK THAT  
16 YEAR?  
17 A. HE WAS IN THE SENSE THAT HE HAD A BOOK  
18 OVERDRAFT AT THE END OF THE YEAR.  
19 Q. AND WAS \$40,000 OF THAT NEGATIVE THIS  
20 DIFFERENCE IN THIS NOVA PINON MONEY?  
21 A. YES.  
22 Q. SO \$40,000 WAS THE DIFFERENCE BETWEEN --  
23 EXCUSE ME. WE DO IT DIFFERENTLY.  
24 NOVA PINON, 481- IN, 440- OUT; RIGHT?  
25 A. RIGHT.  
26 Q. AND YOU DIDN'T COUNT THAT?  
27 A. WELL, I COUNTED IT AS -- IT'S ON THE BALANCE  
28 SHEET AS A LIABILITY. I DIDN'T COUNT IT AS INCOME AND  
3554  
1 EXPENSE.  
2 Q. IT WAS IN THE BANK, THOUGH?  
3 A. IT WAS IN THE BANK -- IN THE BANK AND OUT OF  
4 THE BANK.  
5 Q. WELL, THAT 103-, HOW MUCH WAS THE BANK'S, HOW  
6 MUCH WAS THE NOVA PINON'S?  
7 A. NOVA PINON WAS 41,000 AND THE BANK'S WAS  
8 62,000.  
9 Q. YOU WERE SHOWN ANOTHER PIECE OF PAPER EARLIER,  
10 AND I THINK IT SHOWED THAT THE WITHDRAWALS WERE  
11 APPROXIMATELY 100 MORE THAN WHAT WENT IN; DO YOU REMEMBER  
12 THAT?  
13 A. I BELIEVE SO. IT SHOWS THERE, I THINK, DRAW,  
14 R. BOEKEN, 267,000.  
15 Q. AND SO THAT MINUS 103- WAS THE DIFFERENCE  
16 BETWEEN WHAT HE TOOK OUT -- OR WHAT THEY TOOK OUT AND WHAT  
17 WENT IN?  
18 A. THE DIFFERENCE BETWEEN THE PROFIT OF THE  
19 BUSINESS AND WHAT HE WITHDREW FROM THE BUSINESS.  
20 Q. GOT IT.  
21 WAS THERE A PROFIT FROM THE BUSINESS?  
22 A. YES. ACCORDING TO MY FIGURES THERE IT'S  
23 \$167,000.  
24 Q. AND THAT'S WHERE I'M CIRCLING BACK TO. I WANT  
25 YOU TO TAKE THIS DOCUMENT INTO ACCOUNT. IN 1998 DID THAT  
26 BUSINESS MAKE 167-?

27 A. YES. IN MY OPINION IT MADE \$167,000.

28 MR. PIUZE: THEN I'M DONE, TOO.

3555

1 RECROSS-EXAMINATION

2 BY MR. CARLTON:

3 Q. IN ORDER TO UNRAVEL ALL OF THAT YOU BASICALLY

4 HAD TO RELY ON THE BANK'S STATEMENTS; RIGHT?

5 A. I RELIED ON THE BANK'S STATEMENTS, BUT I DID

6 HAVE ANOTHER DOCUMENT WHICH I WAS ABLE TO LOOK AT WHICH LED

7 ME TO RAISE CERTAIN QUESTIONS WITH MR. BOEKEN.

8 Q. BUT BASICALLY IT WAS THE BANK'S STATEMENT AND

9 THAT'S IT?

10 A. PRIMARILY THE BANK STATEMENTS.

11 Q. THANK YOU.

12 A. YOU'RE WELCOME.

13 MR. PIUZE: I HAVE NO FURTHER QUESTIONS.

14 THE COURT: SIR, YOU MAY STEP DOWN AND YOU ARE

15 EXCUSED.

16 MR. PIUZE: I HAVE NO MORE LIVE WITNESSES THIS

17 AFTERNOON BECAUSE MR. JOHNSON, AS WE KNOW, IS ELSEWHERE.

18 AND IF WE COULD MAYBE HAVE TWO OR THREE MINUTES OF THE

19 COURT'S TIME TO FIGURE OUT WHERE WE ARE.

20 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE'LL

21 TAKE A BREAK UNTIL 2:15 OF THIS AFTERNOON.

22 STAY WITH US. WE'LL SEE WHERE WE ARE IN A FEW

23 MINUTES.

24 THE JURY: (COLLECTIVELY:) STAY HERE OR GO OUT?

25 THE COURT: STEP OUTSIDE.

26 (CONTINUED ON FOLLOWING PAGE.)

27 / / /

28 / / /

3556

1 (THE FOLLOWING PROCEEDINGS WERE HELD

2 IN OPEN COURT OUTSIDE THE PRESENCE

3 OF THE JURY:)

4 THE COURT: WE'RE OUTSIDE THE PRESENCE OF THE JURY AT

5 THE PRESENT TIME. WE HAVE COMPLETED AN INVENTORY OF THE

6 BOXES OF DOCUMENTS, AND WE HAVE ATTEMPTED TO PREPARE IT IN

7 THE MANNER IN WHICH IT DIDN'T DISCLOSE THE CONTENTS OF ANY

8 OF THE PARTICULAR DOCUMENTS, SUCH AS NAMES OF THE CLIENTS

9 OR ANYTHING LIKE THAT. ACTUALLY, JUST THE SUBJECT MATTER

10 OF THE DOCUMENTS.

11 AND I THINK AT THIS POINT, I THINK, AT LEAST

12 THIS LIST SHOULD BE GIVEN TO THE DEFENSE AS WELL AS TO

13 COUNSEL FOR THE PLAINTIFF.

14 SO IF MR. CLERK -- AND I DON'T EXPECT ANY

15 COMMENTS ON IT RIGHT NOW, JUST A CHANCE TO REVIEW. AND I

16 WOULD EXPECT THAT THE DEFENSE WOULD BE GETTING BACK TO

17 ME --

18 MR. CARLTON: ALL RIGHT.

19 THE COURT: -- WITH SOME INDICATION WHAT IT IS THEY

20 WOULD WANT TO SEE AND WHY.

21 MR. CARLTON: THANK YOU, YOUR HONOR.

22 THE COURT: ARE WE READY TO DISCUSS THE PUNITIVE

23 DAMAGE ISSUE OR DO WE WANT TO POSTPONE THAT DISCUSSION FOR

24 A WHILE?

25 MR. PIUZE: I AM.

26 BUT I'D LIKE TO ASK THE COURT, WHAT IS THIS

27 AGAIN, THIS DOCUMENT?

28 THE COURT: THIS IS AN INVENTORY. WHAT WE DID IS WE

3557

1 TOOK THE TWO BOXES OF MATERIALS THAT WE WERE GIVEN AND

2 PREPARED AN INVENTORY OF WHAT WAS IN THOSE BOXES BY LINE



3 ITEM AND CATEGORY. IT DOESN'T DESCRIBE IN DETAIL ANY OF  
4 THE INFORMATION IN THE DOCUMENTS OTHER THAN TO THEIR  
5 GENERAL SUBJECT MATTER.  
6 MR. PIUZE: OKAY. I UNDERSTAND. THANK YOU.  
7 HERE IS THE ANSWER TO THE COURT'S QUESTION.  
8 I'M READY TO DO THAT. IN ADDITION, I'LL JUST LET THE COURT  
9 KNOW THAT WE HAVE TRIED TO GET TOGETHER TO AGREE ON WHAT  
10 CAN BE READ FROM GEOFFREY BIBLE'S -- HE IS THE C.E.O. OF  
11 PHILIP MORRIS -- TESTIMONY IN MINNESOTA VERSUS -- WHATEVER  
12 THE OFFICIAL NAME IS -- MINNESOTA VERSUS THE TOBACCO  
13 INDUSTRY, 1997 TESTIMONY.  
14 WE WILL NEED SOME INPUT FROM THE COURT BEFORE  
15 WE CAN DO THAT. I DON'T KNOW IF IT'S WISE -- I DON'T WANT  
16 TO KEEP THE JURY HANGING AROUND HERE UNNECESSARILY. I  
17 WOULD SAY THE READING WOULD PROBABLY TAKE AN HOUR.  
18 I DON'T KNOW IF WE SHOULD TRY TO RESOLVE THIS  
19 THIS AFTERNOON AND LET THEM GO AND RESOLVE IT AFTER THEY'VE  
20 GONE -- I'M JUST INFORMING THE COURT.  
21 THE COURT: ABOUT HOW MUCH OF MY TIME DO YOU THINK  
22 YOU'LL NEED?  
23 MR. PIUZE: I THINK WE'VE SHOWN WHAT WE WANTED TO  
24 READ. THEY'VE SHOWN THEIR OBJECTIONS. I THINK THE COURT  
25 WOULD HAVE TO RULE -- IT MAY NOT TAKE A LONG TIME, BUT THE  
26 COURT WOULD HAVE TO RULE.  
27 MR. LEITER: IF I CAN HAVE JUST A MOMENT. BASICALLY,  
28 AS WE DISCUSSED YESTERDAY, THIS IS THE ACCORDION  
3558

1 DESIGNATION. WE GOT A MUCH SMALLER ONE THIS MORNING WHICH  
2 MR. LE BERTHON HAS BEEN REVIEWING WHILE WE'VE BEEN HERE IN  
3 COURT.  
4 IF I COULD HAVE JUST A MOMENT.  
5 (PAUSE IN PROCEEDINGS.)  
6 MR. LEITER: YOUR HONOR, HERE IS MY UNDERSTANDING OF  
7 WHERE WE STAND. WE GOT A REVISED, MUCH SHORTER DESIGNATION  
8 THIS MORNING. THERE HAS BEEN SOME BACK AND FORTH OVER  
9 OBJECTIONS, AND THEN TAKING THINGS OUT AND PUTTING BACK  
10 THINGS IN.  
11 MY CONCERN AT THIS MOMENT -- AT LEAST AT OUR  
12 SIDE OF THE TABLE, WE'RE NOT ENTIRELY SURE WHAT'S IN AND  
13 WHAT'S OUT, WHAT OBJECTIONS REMAIN, WHAT WE WOULD WANT TO  
14 COUNTERDESIGNATE, WHICH MIGHT BE FROM THE MATERIALS THE  
15 PLAINTIFF JUST TOOK OUT. AND WE'RE A LITTLE UNCOMFORTABLE  
16 PROCEEDING WITH A READING AT THIS MOMENT BECAUSE WE'RE NOT  
17 ENTIRELY SURE WHERE WE ARE.  
18 THE COURT: COULD YOU GET YOUR END OF IT DONE IN AN  
19 HOUR SO I COULD WORK WITH YOU FROM 3:00 TO 4:00 TO GET IT  
20 FINALIZED?  
21 MR. LEITER: I THINK AS TO THE TRANSCRIPT WE HAVE  
22 HERE WE COULD GET THAT FINALIZED THIS AFTERNOON. THE  
23 REMAINING QUESTION WOULD BE WHETHER WE WANT TO  
24 COUNTERDESIGNATE SOMETHING ELSE IN ADDITION TO THIS  
25 TRANSCRIPT WHICH WE HAVE NOT HAD A CHANCE TO DO. WE JUST  
26 GOT THIS MORNING THE PLAINTIFFS' PORTION. BUT WE COULD  
27 RESOLVE THIS TRANSCRIPT THIS AFTERNOON AND THEN TONIGHT  
28 DECIDE WHETHER THERE IS ANYTHING ELSE WE WANT TO  
3559

1 COUNTERDESIGNATE THAT WASN'T INCLUDED IN THE TRANSCRIPT.  
2 THE COURT: SO I THINK WHAT WE NEED TO DO IS LET THE  
3 JURY GO UNTIL TOMORROW MORNING. BUT THEN MAYBE YOU'RE  
4 GOING TO COUNTERDESIGNATE, MAYBE BRING THEM BACK NOT AT  
5 8:45, MAYBE SOMETHING LIKE 9:45.  
6 MR. PIUZE: THERE IS GOING TO BE A WITNESS HERE, TOO,  
7 YOUR HONOR, MR. JOHNSON.

8 THE COURT: AND MR. JOHNSON IS?  
9 MR. PIUZE: THE ECONOMIST ON THE PUNITIVE DAMAGE  
10 ISSUE.  
11 THE COURT: ALL RIGHT. OKAY.  
12 MR. LEITER: AND I WOULD ASSUME THAT IF THE  
13 PLAINTIFF'S DESIGNATION IS GOING TO TAKE ABOUT AN HOUR TO  
14 READ, I'LL ASSUME WE'RE NOT GOING TO HAVE ANY KIND OF  
15 DESIGNATION THAT IS DRAMATICALLY LONGER THAN THAT.  
16 THE COURT: HAVE THE JURY -- INFORM THE JURY WE'LL  
17 SEE THE JURY TOMORROW MORNING AT 8:45 A.M.  
18 THE CLERK: SAME TIME.  
19 THE COURT: ALL RIGHT. THEN WE DO NEED TO GET DOWN  
20 TO THE ISSUE OF THE METHOD OF CALCULATION FOR THE PUNITIVE  
21 DAMAGES.  
22 MR. PIUZE: CAN I JUST BACK UP JUST SO THE COURT  
23 WON'T THINK WE'VE BEEN SLEEPING ON THE JOB. THERE HAVE  
24 BEEN VARIOUS DESIGNATIONS AND COUNTERDESIGNATIONS GOING  
25 BACK AND FORTH ON THIS GEOFFREY BIBLE THING FOR A WHILE.  
26 WHAT WE DID WAS LOP OFF THE TREMENDOUS MAJORITY OF IT FOR  
27 SPEED PURPOSES, SO THE ANSWER IS, YES, I'M READY TO TALK  
28 ABOUT THAT.  
3560  
1 WOULD YOU LIKE ME TO TALK, OR WOULD YOU LIKE  
2 TO START?  
3 THE COURT: MAYBE I SHOULD SPEAK FIRST, JUST TO GIVE  
4 COUNSEL SORT OF THE SENSE OF THE TERRAIN FROM THE COURT'S  
5 PERSPECTIVE.  
6 THOMAS ELIE (PHONETIC) IS A CASE WHERE THE  
7 COURT OF APPEAL REVERSED A PUNITIVE DAMAGE AWARD ON THE  
8 GROUNDS THAT AN ANNUAL REPORT INCLUDED ASSETS, REVENUES,  
9 AND PROFITS FROM A HOST OF BUSINESSES WHICH WERE NOT  
10 RELATED TO THE CORE BUSINESS WHICH HAD BEEN SUED. AND  
11 THERE WAS REALLY NO OBJECTION BELOW.  
12 THE REPORT APPARENTLY WENT INTO EVIDENCE, NO  
13 OBJECTION BY THE DEFENSE. BUT THEN THE ISSUE WAS RAISED ON  
14 APPEAL, AND THE COURT REVERSED IT AND IT REVERSED THE  
15 ENTIRE PUNITIVE DAMAGE AWARD, BASICALLY SAYING THAT THERE  
16 IS A VERY STRONG PUBLIC POLICY INTEREST AT STAKE HERE SUCH  
17 THAT THE COURT SHOULD HAVE INTERVENED BELOW EVEN IF THE  
18 PARTIES DID NOT OBJECT.  
19 THE CLERK: WE HAVE SOME JURORS TO GET SOME STUFF  
20 OUT OF THE JURY AREA.  
21 THE COURT: SURE.  
22 (PAUSE IN PROCEEDINGS.)  
23 THE COURT: THERE ARE ALTER EGO ARGUMENTS THAT ARE  
24 MADE, BUT THE COURT REJECTED IT AND BASICALLY WAS VERY  
25 CONCERNED ABOUT SOME DUE PROCESS CONSIDERATIONS INVOLVED  
26 THERE.  
27 IT'S MY UNDERSTANDING THAT IF THE PLAINTIFF IN  
28 THIS CASE WERE TO BE ABLE TO REACH THE PARENT CORPORATION'S  
3561  
1 NET WORTH FOR THE PURPOSES OF A CALCULATION OF PUNITIVE  
2 DAMAGES, THERE WOULD HAVE TO BE A SHOWING ALONG THE LINES  
3 OF AN ALTER EGO, SOME WAY TO SHOW THAT THE REAL CONTROL  
4 IS -- OF PHILIP MORRIS, IS COMING FROM SOME OTHER ENTITY,  
5 AND IT WOULD HAVE TO BE A FAIRLY STRONG SHOWING.  
6 SO I GUESS I HAVE TO TURN TO THE PLAINTIFF AND  
7 SAY IS THE COURT CORRECT ON THE LAW? AND SECONDLY, IF THE  
8 COURT IS CORRECT ON THE LAW, WHAT IS THE OFFER OF PROOF?  
9 MR. PIUZE: I DON'T KNOW -- CAN I HAND THIS TO THE  
10 COURT DIRECTLY?  
11 MR. LEITER: CAN WE SEE WHAT IT IS?  
12 MR. PIUZE: IT'S WHAT I JUST GAVE MR. CARLTON.

13 ANSWER NUMBER ONE, IS YOUR HONOR CORRECT?  
14 YES.  
15 QUESTION NUMBER TWO -- WHAT DO I HAVE? I'VE  
16 HANDED COUNSEL IN COURT A FIVE-PAGE DOCUMENT OFF OF PHILIP  
17 MORRIS'S WEB SITE WHICH IS ITS HISTORY OUT OF ITS MOUTH,  
18 AND I DIRECT THE COURT'S ATTENTION TO 1985, WHICH IS THEIR  
19 HISTORY, IN WHICH THEY BASICALLY SAY THAT THE CHILD BEGAT  
20 THE PARENT. PHILIP MORRIS TOBACCO BUILT A HOLDING COMPANY  
21 AROUND IT IN 1985. AND THAT'S THE EXTENT OF MY OFFER OF  
22 PROOF.  
23 THE COURT: SO IT'S THIS ONE SENTENCE, "THE CORPORATE  
24 FRAMEWORK OF PHILIP MORRIS IS RESTRUCTURED AND PHILIP  
25 MORRIS COMPANIES, INC., A HOLDING COMPANY, BECOMES THE  
26 PUBLICLY HELD PARENT OF PHILIP MORRIS, INC."?  
27 MR. PIUZE: YES.  
28 THE COURT: I'M AFRAID IT WOULD REQUIRE A LOT MORE  
3562  
1 THAN THAT, IN THE COURT'S VIEW.  
2 MR. PIUZE: THEN I LOSE.  
3 THE COURT: FAIR ENOUGH.  
4 NOW, THERE WAS SOME DISCUSSION ABOUT THE  
5 AMOUNT, AND THERE WAS AN OFFER FROM THE DEFENSE TO  
6 STIPULATE TO A NET WORTH OF 6 BILLION.  
7 IT'S MY UNDERSTANDING THAT THERE IS A  
8 SUBSTANTIAL DISAGREEMENT OVER THAT ISSUE.  
9 MR. PIUZE: YES, SUBSTANTIAL IS CORRECT.  
10 MR. JOHNSON -- WOULD THE COURT LIKE ME TO GO?  
11 THE COURT: I DON'T KNOW HOW MUCH YOU NEED TO GO INTO  
12 IT IN DETAIL. COULD I JUST HAVE A VERY TOP LEVEL, TWO OR  
13 THREE SENTENCE DESCRIPTION OF WHAT THE COURT MIGHT EXPECT  
14 ON THAT?  
15 MR. PIUZE: YES.  
16 IN EVALUATING A PORTION OF A PUBLICLY HELD  
17 COMPANY HERE, PHILIP MORRIS, THE HOLDING COMPANY, IS A  
18 PUBLICLY HELD COMPANY. WE KNOW MANY, MANY THINGS ABOUT IT.  
19 BY PICKING UP THE WALL STREET JOURNAL WE KNOW WHAT THE  
20 CAPITALIZATION OF THE COMPANY IS, \$105 BILLION. WE GET  
21 THAT BY FIGURING OUT THE OUTSTANDING SHARES AND MULTIPLYING  
22 BY THE STOCK PRICE. WE NOTE FOR THE COURT THIS IS NO  
23 FLY-BY-NIGHT DOT COM COMPANY. OBVIOUSLY EVERYBODY KNOWS  
24 THAT THIS IS REAL MONEY WE ARE TALKING ABOUT HERE.  
25 PHILIP MORRIS HAS PUBLISHED, IN ITS 2000  
26 ANNUAL REPORT, SIGNED BY MR. BIBLE, ITS PROFIT AND LOSSES  
27 FOR ITS SUBSIDIARIES, SO I KNOW FROM THEIR DOCUMENT THAT  
28 PHILIP MORRIS'S DOMESTIC TOBACCO AMOUNTS FOR 28 PERCENT OF  
3563  
1 PHILIP MORRIS'S HOLDING COMPANY'S TOTAL SALES.  
2 AND I ALSO KNOW FROM THEIR DOCUMENT THAT  
3 PHILIP MORRIS'S DOMESTIC TOBACCO ACCOUNTS FOR APPROXIMATELY  
4 33 PERCENT OF THE TOTAL PROFITS OF THE ENTIRE SHEBANG.  
5 MY ECONOMIST, USING THE 28 PERCENT NUMBER --  
6 THE COURT: YOUR ECONOMIST IS GOING TO BE?  
7 MR. PIUZE: MR. JOHNSON.  
8 THE COURT: MR. JOHNSON.  
9 MR. PIUZE: -- USING THE 28 PERCENT NUMBER AND  
10 APPLYING THAT TO THE \$105 BILLION CAPITALIZATION OF THE  
11 CORPORATION COMES UP WITH A NET VALUE OF \$30 BILLION.  
12 THE COURT: AND HE IS GOING TO STATE THAT AS A  
13 QUALIFIED OPINION -- AS AN OPINION AFTER BEING QUALIFIED AS  
14 AN EXPERT?  
15 MR. PIUZE: YES.  
16 AND THEN TAKING THE PROFITS OF PHILIP MORRIS'S  
17 DOMESTIC TOBACCO -- I SHOULD JUST INTERJECT HERE, THERE IS

18 AN INTERNATIONAL TOBACCO COMPANY, TOO. WE'RE SPECIFICALLY  
19 LEAVING THAT OUT. THIS IS DOMESTIC ONLY NOW.  
20 PHILIP MORRIS'S DOMESTIC TOBACCO'S PROFITS  
21 LAST YEAR WERE \$5.35 BILLION. IT WAS JUST A HAIR SHY OF  
22 \$5 BILLION THE YEAR BEFORE. DOMESTIC TOBACCO ONLY.  
23 USING THE 33 PERCENT NUMBERS, THE FACT THAT  
24 THE DOMESTIC TOBACCO COMPANY ACCOUNTED FOR 33 PERCENT OF  
25 THE PROFITS OF THE UMBRELLA ORGANIZATION, THEN THE VALUE  
26 COMES OUT TO \$35 BILLION.  
27 SO ON THE ONE HAND, SALES RATIO, 30 BILLION.  
28 ON THE OTHER HAND, PROFIT RATIO, 35 BILLION. MR. JOHNSON  
3564

1 HAS A THIRD --  
2 THE COURT: YOU DON'T NEED TO GO ANY FURTHER. ALL  
3 RIGHT. WHERE IS THE \$6 BILLION FIGURE GOING TO COME FROM?  
4 MR. LEITER: LET ME FIRST START WITH WHAT THE  
5 \$6 BILLION FIGURE IS. THAT WAS AS OF A YEAR AGO IN THE  
6 LIGHTLY (PHONETIC) TRIAL, THE STIPULATED AMOUNT. MY  
7 UNDERSTANDING IS THE NUMBER WOULD BE A LITTLE HIGHER THIS  
8 YEAR, AS OF A YEAR LATER.  
9 BUT MY UNDERSTANDING IS IT IS BASICALLY A  
10 STANDARD NET WORTH ANALYSIS WHICH IS ASSETS MINUS  
11 LIABILITIES, SIMILAR TO WHAT WE JUST HEARD TESTIMONY ABOUT  
12 WITH CONNECTION TO MR. BOEKEN'S BUSINESS. THE NOTION THAT  
13 NET WORTH IS A FRACTION OF THE AMOUNT OF MONEY THAT  
14 STOCKHOLDERS HAVE INVESTED, THE CAPITALIZATION IS, WE  
15 THINK, A COMPLETELY INAPPROPRIATE MEASURE OF NET WORTH. IF  
16 WE HAVE TO CROSS-EXAMINE ON IT, WE'LL CROSS-EXAMINE ON IT.  
17 BUT THAT'S THE ISSUE.  
18 IT SHOULD BE NOT UNACKNOWLEDGED THAT WHEN  
19 MR. JOHNSON WAS PREPARED TO TESTIFY ABOUT THE NET WORTH OF  
20 PHILIP MORRIS COMPANIES HIS NUMBER WAS ABOUT \$15 BILLION,  
21 WHICH WAS BASED ON AN ANALYSIS SIMILAR TO THE ONE I JUST  
22 DESCRIBED, ASSETS AND LIABILITIES.  
23 NOW, AT THE LAST MINUTE THERE IS A COMPLETELY  
24 NEW ANALYSIS WHERE MIRACULOUSLY HIS NET WORTH FOR THE ONE  
25 PORTION OF PHILIP MORRIS COMPANIES IS GOING TO BE THREE  
26 TIMES, FOUR TIMES AS MUCH.  
27 THE COURT: I WON'T HAVE TO MAKE THE DECISION AS TO  
28 WHICH IS THE CORRECT ANALYSIS?  
3565

1 MR. LEITER: I'M NOT ASKING YOU TO MAKE THAT. THAT'S  
2 WHAT'S GOING ON, AND AS TO THE DETAILS OF HIS CALCULATION,  
3 WE'RE DEPOSING HIM LATER THIS AFTERNOON AND THAT'S ALL WE  
4 KNOW.  
5 CAN I MAKE ONE OTHER MENTION WITH REGARD TO  
6 THIS TESTIMONY? WE ANTICIPATE THAT ONE OF THE REASONS THAT  
7 PLAINTIFF WANTS MR. JOHNSON TO TESTIFY IS TO GET INTO A  
8 WHOLE BUNCH OF OTHER NUMBERS THAT HAVE NOTHING TO DO WITH  
9 NET WORTH, JUST TO THROW A BUNCH OF OTHER IRRELEVANT  
10 NUMBERS OUT IN FRONT OF THE JURY, WHICH COULD INCLUDE  
11 ANYTHING FROM HOW MUCH THE C.E.O. MAKES TO HOW MUCH THEY  
12 SPEND FOR ADVERTISING TO HOW MUCH THEY SPEND FOR THIS,  
13 THAT, AND THE OTHER THING, WHICH I JUST MENTION NOW AS AN  
14 ISSUE THAT WILL PROBABLY ARISE WHEN HE TESTIFIES.  
15 THE COURT: THANK YOU FOR ALERTING ME.  
16 MR. PIUZE: COULD I -- I DON'T WANT TO WASTE WORDS,  
17 IF I DON'T HAVE TO.  
18 THE ADAMS VERSUS MORIKAMI (PHONETIC), JUST AS  
19 A LITTLE HISTORICAL FOOTNOTE, EXISTS BECAUSE THE TRIAL  
20 LAWYER IN ADAMS CALLED ME PERSONALLY AND SAID I'M ABOUT TO  
21 ARGUE PUNITIVE DAMAGES, DO I HAVE TO PUT ON ANY EVIDENCE OF  
22 DR. MORIKAMI'S FINANCIAL CONDITION? AND BECAUSE I'D DONE A

23 LOT OF BAD FAITH AT THAT POINT, A LOT OF PUNITIVE DAMAGE  
24 WORK, I SAID, NO, WHICH WAS THE CORRECT ANSWER, BY THE WAY,  
25 BUT THE CALIFORNIA SUPREME COURT THOUGHT THAT IN THE FUTURE  
26 THE ANSWER SHOULD BE YES.  
27 SO I'M FAMILIAR WITH ADAMS VERSUS MORIKAMI.  
28 IT TALKS ABOUT FINANCIAL CONDITION. IT ISN'T JUST NET  
3566

1 WORTH, IT ISN'T JUST PROFIT. THERE IS EVIDENCE OF  
2 FINANCIAL CONDITION, HISTORICAL CITE.  
3 THE COURT: THANK YOU VERY MUCH FOR THAT ANECDOTE.  
4 THEN WHAT YOU DO IS YOU TAKE A LOOK AT THE  
5 DOCUMENT LIST AS MUCH AS YOU WANT TO. SAY AT 4:00 O'CLOCK  
6 WE'LL GET BACK ON THE DEPOSITION DESIGNATIONS, AND I'LL  
7 WORK WITH YOU FOR AN HOUR TO SEE HOW MUCH I CAN GET DONE,  
8 WITHOUT PREJUDICE, OF COURSE, TO THE DEFENSE TO DESIGNATE  
9 FURTHER INFORMATION OVER THE EVENING.  
10 I'LL SEE YOU IN 45 MINUTES.  
11 MR. LEITER: WE COULD POTENTIALLY START A LITTLE  
12 EARLIER.  
13 THE COURT: I'LL BE AVAILABLE TO YOU.  
14 MR. LEITER: THANK YOU, YOUR HONOR.

15  
16 (RECESS.)

17  
18  
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23  
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3567

1 (THE FOLLOWING PROCEEDINGS WERE HELD  
2 IN OPEN COURT OUTSIDE THE PRESENCE  
3 OF THE JURY:)  
4  
5 THE COURT: IF WE CAN HAVE THE PROBLEM PRESENTED TO  
6 ME WE'LL SEE IF WE CAN GET IT SOLVED.  
7 MR. LE BERTHON: ADAM LE BERTHON FOR PHILIP MORRIS.  
8 WE HAVE SEVERAL ISSUES WITH RESPECT TO THE  
9 TRANSCRIPT OF MR. BIBLE'S TESTIMONY ON MARCH 2ND, 1998.  
10 IF YOU'VE GOT A COPY THERE, I WANTED TO TURN  
11 YOUR ATTENTION TO PAGES 5711, LINE 6. AND OUR OBJECTIONS  
12 RUN ALL THE WAY THROUGH 5714, LINE 7.  
13 THE COURT: GIVE ME A MOMENT TO READ THIS.  
14 MR. LE BERTHON: CERTAINLY.  
15 (PAUSE IN PROCEEDINGS.)  
16 THE COURT: AND THIS GENTLEMAN IS WHO?  
17 MR. LE BERTHON: HE IS THE C.E.O. -- I BELIEVE HE IS  
18 STILL THE C.E.O. OF PHILIP MORRIS COMPANIES.  
19 THIS WHOLE LINE OF QUESTIONING REGARDING THESE  
20 VARIOUS DUTIES TO MAKE A SAFE PRODUCT, TO MAKE  
21 MISREPRESENTATIONS, TO WARN CONSUMERS ABOUT KNOWN RISKS AND  
22 SO FORTH, AND MORE IMPORTANTLY THE FOLLOW-UP QUESTIONS  
23 ABOUT WHETHER A COMPANY SHOULD BE HELD ACCOUNTABLE FOR ANY  
24 BREACH OF THESE DUTIES THERE, IS REALLY A LEGAL  
25 CONCLUSION. IT IS UNDULY PREJUDICIAL AND IT'S MISLEADING.  
26 IT'S MISLEADING IN THE CONTEXT OF THIS LAWSUIT  
27 WHERE THESE VERY DUTIES, LEGAL DUTIES, ARE AT ISSUE. THERE

28 IS MANY MORE ELEMENTS THAT GO TO WHETHER THE COMPANY SHOULD  
3568

1 BE HELD LIABLE FOR BREACH OF SOME OF THESE DUTIES, AND IT'S  
2 PARTICULARLY MISLEADING IN THIS INSTANCE.

3 IF YOU LOOK BACK AT PAGE 5704 THERE IS A PRIOR  
4 LINE OF QUESTIONING ABOUT VARIOUS DUTIES, AND HE  
5 ACKNOWLEDGES -- HE ACKNOWLEDGES THAT PHILIP MORRIS HAS  
6 DUTIES UNDER THE LAW, DUTIES TO PUBLIC HEALTH, DUTIES TO  
7 SHAREHOLDERS. IT'S NOT AT ALL CLEAR WHAT DUTIES WE'RE  
8 TALKING ABOUT HERE.

9 I THINK THE JURY WILL BE MISLED INTO BELIEVING  
10 THAT THESE ARE EFFECTIVELY ADMISSIONS IN THE EVENT THAT THE  
11 JURY WOULD FIND THE PRODUCT WAS NOT AS SAFE AS IT COULD  
12 HAVE BEEN, OR THAT FALSE STATEMENTS MIGHT HAVE BEEN MADE,  
13 THAT IT OUGHT TO FIND LIABILITY, AND THAT'S SIMPLY NOT  
14 APPROPRIATE. WE OBJECTED FOR THOSE REASONS.

15 THE COURT: THANK YOU.

16 YES, SIR.

17 MR. PIUZE: YOUR HONOR, THESE QUESTIONS ARE BEING PUT  
18 DIRECTLY TO THE TOP DOG IN PHILIP MORRIS. HE STATES THE  
19 COMPANY'S POSITION. HE IS AN AUTHORIZED REPRESENTATIVE OF  
20 THE COMPANY. HE SPEAKS FOR THE COMPANY. NO ONE CAN BE  
21 MORE AUTHORIZED THAN HIM TO STATE THE COMPANY'S POSITION.  
22 NOT ONLY DOES THIS STATE HIS STATE OF MIND,  
23 BUT THE COMPANY'S STATE OF MIND. HE IS SPEAKING DIRECTLY  
24 FOR THE COMPANY. HE IS TELLING WHOEVER IS ASSEMBLED,  
25 WITHOUT OBJECTION, WHAT THE COMPANY'S STATE OF MIND IS,  
26 WHAT HIS STATE OF MIND IS.

27 THE COURT: WHAT ABOUT THE ARGUMENT THAT THESE ARE  
28 REALLY QUESTIONS HAVING TO DO WITH LEGAL DUTY?

3569

1 MR. PIUZE: THEY ARE NOT QUESTIONS HAVING TO DO WITH  
2 LEGAL DUTY, AND I DON'T SEE ANY QUESTION THAT ASKS ABOUT  
3 LEGAL DUTY. BUT IF THEY ARE -- AND HE IS STATING WHAT HE  
4 THINKS PHILIP MORRIS'S LEGAL DUTY IS -- THAT STILL GOES TO  
5 STATE OF MIND, AND I THINK -- STILL THINK IT'S FAIR GAME  
6 FROM THE HORSE'S -- I DON'T MEAN THIS IN A DEROGATORY  
7 SENSE TO MR. BIBLE. THIS GUY RUNS ONE OF THE LARGEST  
8 CORPORATIONS, ONE OF THE HEAVIEST FINANCIAL INSTITUTIONS IN  
9 THE ENTIRE WORLD. HE DIDN'T GET UP THERE IN A VACUUM, AND  
10 OBVIOUSLY HE HAS BEEN WELL BRIEFED AND HE IS STATING WHAT  
11 HE BELIEVES THIS COMPANY'S OBLIGATIONS TO -- THE DUTIES AND  
12 OBLIGATIONS TO THE PUBLIC ARE.

13 THE COURT: THE DATES OF TESTIMONY?

14 MR. LE BERTHON: 1998.

15 THE COURT: HE IS STILL THE PRESIDENT?

16 MR. PIUZE: C.E.O.

17 THE COURT: CHIEF EXECUTIVE OFFICER.

18 MR. LE BERTHON: OF PHILIP MORRIS COMPANIES. IT'S  
19 THE UMBRELLA.

20 THE COURT: I'VE HEARD ARGUMENT ON THIS. I'M GOING  
21 TO TAKE THAT UNDER SUBMISSION.

22 WHAT ELSE DO WE HAVE?

23 MR. LE BERTHON: THANK YOU, YOUR HONOR.

24 LET ME TURN YOUR ATTENTION TO PAGE 5718, LINE  
25 24, THROUGH 5719, LINE 14.

26 THE COURT: ALL RIGHT.

27 MR. LE BERTHON: WE BELIEVE THAT THE TESTIMONY ABOUT  
28 MEETINGS WITH LAWYERS -- AND WE HAVE DISCUSSIONS -- THE  
3570

1 QUESTION HAD TO DO WITH COURTROOM TACTICS. THAT'S SIMPLY  
2 NOT APPROPRIATE. IT'S UNDULY PREJUDICIAL. IT HAS NOTHING  
3 TO DO WITH THIS CASE.

4 THE COURT: WHAT IS THE RELEVANCE ABOUT WHEN THE  
5 FIRST TIME IT IS THAT THIS PARTICULAR PERSON SAW THE FRANK  
6 STATEMENT?

7 MR. LE BERTHON: PARDON ME, YOUR HONOR?

8 THE COURT: AM I READING THIS RIGHT, 57 -- MAYBE I  
9 STARTED AT THE WRONG PAGE -- 5715 IS WHERE I STARTED.

10 MR. LE BERTHON: PERHAPS I MISSPOKE. 5718 THROUGH  
11 5719.

12 THE COURT: OKAY. STARTING AT?

13 MR. LE BERTHON: LINE 24.

14 THE COURT: OKAY. NOW I'M GOING TO READ IT.

15 ALL RIGHT. WHAT'S THE RELEVANCE OF THIS  
16 PARTICULAR TESTIMONY FROM THE PLAINTIFFS' PERSPECTIVE?

17 MR. PIUZE: THAT WHEN HE TOOK OVER THE REINS IN 1994  
18 AS THE C.E.O. AND HE WAS ABOUT READY TO WRITE THE ANNUAL  
19 REPORT -- THAT'S IN PARENTHESES -- HE TOOK OVER THE REINS  
20 OF PHILIP MORRIS'S C.E.O. IN 1994. HE DID NOT WANT TO BE  
21 THINKING ABOUT PAST PROBLEMS. HE WANTED TO LOOK FORWARD.  
22 IT WAS HIS GOAL TO LOOK FORWARD.

23 SO WHAT HE DID AS FAR AS THE SO-CALLED HEALTH  
24 ISSUE WAS CONCERNED IN LOOKING FORWARD WASN'T TO TALK TO  
25 SCIENTISTS, IT WASN'T TO TALK TO HIS HEALTH OFFICIALS, IT  
26 WASN'T TO TALK TO PEOPLE ABOUT THE SAFETINESS OF THE  
27 CIGARETTE; IT WAS TO GET TOGETHER ALL OF THE ATTORNEYS TO  
28 FIGURE OUT WHAT WAS GOING TO HAPPEN WITH LITIGATION. SO  
3571

1 THAT'S THE RELEVANCE OF THIS PORTION HERE.

2 MR. LE BERTHON: I THINK, YOUR HONOR, THAT'S NOT WHAT  
3 IT SAYS AT ALL.

4 THE COURT: IT SEEMS TO ME THERE WAS QUITE A BIT OF  
5 ARGUMENT IN THAT. OFTENTIMES IN DESCRIBING RELEVANCE YOU  
6 HAVE TO GIVE AN ARGUMENT TO THE COURT.

7 MR. PIUZE: I APOLOGIZE IF I ARGUED. I DIDN'T REALLY  
8 MEAN TO. THAT'S THE WAY I SAW WHAT MR. CIRESI WAS AFTER  
9 HERE.

10 THE COURT: HE IS GETTING TOGETHER WITH HIS LAWYERS  
11 AND ASKING THEM, TELL ME WHAT THIS IS ALL ABOUT. I MEAN,  
12 WHY SHOULD THE COURT INTERFERE WITH THE RIGHT OF A PARTY  
13 THAT GET TOGETHER WITH THEIR LAWYERS AND TALK ABOUT  
14 EXPOSURE AND THINGS LIKE THAT?

15 MR. PIUZE: I'M NOT ASKING THE COURT TO INTERFERE  
16 WITH ANYTHING. THERE IS NOTHING IN HERE ABOUT THE COURT  
17 INTERFERING.

18 I THINK WHAT CIRESI WAS GOING AFTER, THE WAY I  
19 READ THIS -- AND IF I WERE TO ARGUE THIS TO THE JURY, WHAT  
20 I WOULD SAY IS THIS GUY'S PRIORITIES ARE IN THE WRONG ORDER  
21 BECAUSE WHEN HE TOOK OVER, ONE OF THE FIRST THINGS HE DOES  
22 ISN'T TO SAY WHAT CAN WE DO TO ALLEVIATE THE PROBLEM OUR  
23 PRODUCT IS CAUSING? WHAT HE DOES IS TAKE OVER AND SAY,  
24 WHERE DO WE STAND LITIGATIONWISE?

25 THE COURT: GOES AND GETS SOME LEGAL ADVICE.

26 MR. PIUZE: WHERE DO WE STAND LITIGATIONWISE?

27 THE COURT: THAT'S WRONG -- WHAT COUNSEL IS GOING TO  
28 ARGUE IS IT'S WRONG TO GO TO YOUR LAWYER AND GET LEGAL  
3572

1 ADVICE?

2 MR. PIUZE: I DON'T THINK IT'S WRONG TO GO TO A  
3 LAWYER, BUT I THINK THAT WHEN WE'RE FACED WITH QUESTIONS OF  
4 HEALTH, THAT THE LAWYERS PROBABLY SHOULDN'T COME FIRST,  
5 THAT THE SCIENTISTS, DOCTORS, AND HEALTH PEOPLE SHOULD COME  
6 FIRST, NOT THE LAWYERS.

7 THE COURT: OBJECTION SUSTAINED AS TO THIS MATERIAL.

8 352 AS WELL AS THE LEGAL BASIS ARGUED.

9 MR. PIUZE: CAN MR. LE BERTHON REPEAT THE LINES SO I  
10 CAN GET THEM TOTALLY OUT OF HERE?  
11 MR. LE BERTHON: IT WAS PAGE 5718, LINE 24, THROUGH  
12 5719, LINE 14.  
13 MR. PIUZE: LINE 14. OKAY.  
14 MR. LE BERTHON: NEXT, YOUR HONOR, PAGE 5721, LINE  
15 11, THROUGH 5721, LINE 24.  
16 THE COURT: WHY NOT?  
17 MR. LE BERTHON: WHY IS THIS OBJECTIONABLE, YOUR  
18 HONOR?  
19 THE F.D.A. HAS NOTHING TO DO WITH THIS.  
20 REGULATION OR POTENTIAL REGULATIONS OF THE TOBACCO INDUSTRY  
21 BY THE F.D.A. IS NOT INVOLVED IN THIS LAWSUIT. INDEED, THE  
22 F.D.A.'S PRIOR EFFORTS TO REGULATE THE TOBACCO INDUSTRY  
23 WERE FOUND TO BE UNLAWFUL AND WERE STRICKEN. THIS HAS  
24 NOTHING TO DO WITH WHAT'S GOING ON HERE. IT'S IRRELEVANT.  
25 IT'S UNDULY PREJUDICIAL. I BELIEVE IN THE PAST, YOUR  
26 HONOR, YOU SUSTAINED SOME OF OUR OBJECTIONS TO OTHER  
27 LAWSUITS, F.D.A., THINGS OF THAT NATURE.  
28 THE COURT: THE PLAINTIFF?  
3573

1 MR. PIUZE: LET ME HAVE A SECOND TO THINK ABOUT THE  
2 LAST PART OF WHAT HE JUST SAID, PLEASE.  
3 WELL, THE OTHER LAWSUITS CUT A COUPLE OF WAYS  
4 BECAUSE IT SEEMS TO ME THAT ALTHOUGH THERE WAS A MOTION  
5 IN LIMINE BY THE DEFENSE NOT TO BRING UP OTHER LAWSUITS,  
6 THE DEFENSE DID THAT, JUST OUT OF THE BOX ON  
7 CROSS-EXAMINATION, VIRTUALLY WITH ALL OF MY EXPERTS. I'D  
8 JUST MAKE THAT COMMENT TO START WITH.  
9 I THINK THIS IS FAIR GAME. I DON'T KNOW WHY  
10 THIS IS IRRELEVANT. I DON'T KNOW WHY THIS HAS, AS HE SAYS,  
11 NOTHING TO DO WITH OUR CASE.  
12 THE COURT: IT'S NOT HIS BURDEN TO SHOW RELEVANCE.  
13 MR. PIUZE: I THINK IT DOES HAVE TO DO WITH THE CASE  
14 BECAUSE THIS CASE HAS TO DO WITH PRODUCT SAFETY. AND  
15 AGAIN, THIS CUTS INTO THE THREE-PRONGED ATTACK OR THE  
16 THREE-PRONGED STRATEGY THAT THE INDUSTRY HAD GOING BACK TO  
17 1952, WHICH WAS LITIGATION, POLITICS, AND PUBLIC OPINION.  
18 AND WHAT THEY ARE TRYING TO DO HERE IS KEEP  
19 THE GOVERNMENT AT BAY, I BELIEVE. SO THAT'S MY ANSWER.  
20 MR. LE BERTHON: YOUR HONOR, TO THE EXTENT THAT HE  
21 BELIEVES WE WERE WORKING TO KEEP THE GOVERNMENT AT BAY,  
22 IT'S PROBABLY ALSO SUBJECT TO A NOERR-PENNINGTON OBJECTION  
23 AS WELL.  
24 THE COURT: I DEALT WITH THAT EARLIER. THAT'S  
25 SUBMITTED.  
26 NEXT?

27 MR. LE BERTHON: THANK YOU, YOUR HONOR.  
28 THE FINAL OBJECTION --  
3574

1 MR. PIUZE: I DIDN'T HEAR THE RULING.  
2 THE COURT: SUBMITTED.  
3 I WANT TO LOOK AT SOME OF MY PRIOR NOTES ON  
4 NOERR-PENNINGTON.  
5 MR. LE BERTHON: FINALLY, 5731, LINE 23, THROUGH  
6 5732, LINE 13. AND IT'S REALLY QUITE SIMILAR.  
7 THE COURT: 5731 BEGINNING AT WHAT LINE, SIR?  
8 MR. LE BERTHON: LINE 23.  
9 THE COURT: THROUGH?  
10 MR. LE BERTHON: 5732, LINE 13.  
11 THE COURT: OKAY. LET ME READ THAT.  
12 I DON'T HAVE THE FULL CONTEXT OF THIS. IS  
13 THIS WITH REFERENCE TO AN ANNUAL REPORT OR SOMETHING ALONG



14 THOSE LINES?  
15 MR. LE BERTHON: I BELIEVE IT'S A LETTER TO  
16 SHAREHOLDERS.  
17 THE COURT: A LETTER TO SHAREHOLDERS.  
18 ALL RIGHT.  
19 MR. LE BERTHON: AGAIN, YOUR HONOR, WE OBJECT TO THIS  
20 ON THE GROUNDS OF RELEVANCE, UNDUE PREJUDICE, AND PERHAPS  
21 NOERR-PENNINGTON. IT'S A DISCUSSION OF THREAT OF F.D.A.  
22 REGULATION, NEGATIVE MEDIA COVERAGE, OTHER LITIGATION, NOT  
23 THIS LAWSUIT. IT REALLY HAS NOTHING TO DO WITH THIS CASE.  
24 MR. PIUZE: I MAKE THE SAME COMMENTS AGAIN. THIS  
25 MATTER TAKES OVER THE REINS OF THIS GIANT CORPORATION AND  
26 TELLS HIS SHAREHOLDERS EXACTLY WHERE HIS PRIORITIES ARE FOR  
27 THE CORPORATION. I COULDN'T SAY IT BETTER THAN HE HAS  
28 ALREADY DONE.

3575

1 AS TO BOTH, I'LL TAKE MR. LE BERTHON ON HIS  
2 WORD, THE LAST OF THESE TWO DEALS WITH THE SAME SUBJECT  
3 MATTER. I THINK THAT'S A PROPER CHARACTERIZATION.  
4 WITH THAT IN MIND, JUMPING BACK TO THE LAST  
5 ONE, IT'S JUST BEEN BROUGHT TO MY ATTENTION -- AND I'D LIKE  
6 TO BRING IT TO THE COURT'S ATTENTION, FOR WHATEVER IT'S  
7 WORTH -- THAT IN THAT PORTION BETWEEN 5721, LINE 11, AND  
8 5722, LINE 23, THERE IS TALK IN THERE --  
9 (COUNSEL CONFERRED SOTTO VOCE.)  
10 MR. PIUZE: GIVE ME A SECOND, PLEASE.  
11 (PAUSE IN PROCEEDINGS.)  
12 MR. LE BERTHON: IF I COULD INTERJECT WHILE THEY ARE  
13 LOOKING FOR A PAGE.  
14 THE UNITED STATES SUPREME COURT HAS HELD THAT  
15 THE F.D.A. DID NOT HAVE JURISDICTION TO REGULATE THE  
16 TOBACCO INDUSTRY, AND THE IMPLICATION THAT THEY ARE TRYING  
17 TO MAKE THAT PHILIP MORRIS AND THE TOBACCO COMPANIES WERE  
18 DOING SOMETHING WRONG BY CHALLENGING THAT IS SIMPLY WRONG  
19 AND UNFAIR.  
20 MR. PIUZE: HERE IS WHAT I WANTED TO ADD. AND I  
21 APOLOGIZE FOR NOT HAVING IT IMMEDIATELY AT HAND.  
22 5721, PART OF THE STUFF THAT'S IN AND NOT  
23 CHALLENGED IS A QUESTION STARTING AT LINE 7, WHERE CIRESI  
24 ASKS HIM ABOUT DEFENDING THE COMPANY AGAINST OUTSIDE  
25 THREATS. AND NOW IN THE PORTION THAT IS BEING CHALLENGED  
26 ON RELEVANCY, AMONG OTHER GROUNDS, THE QUESTION AT 14  
27 STARTS OFF: "AND WHAT ABOUT THESE OUTSIDE THREATS?"  
28 ONE OF THESE OUTSIDE THREATS IS REGULATION.

3576

1 SO IT DOES MATCH UP TO WHAT WAS SAID ABOVE.  
2 THE COURT WAS ASKING ME FOR RELEVANCE, AND I'M  
3 SHOWING THE COURT HOW THIS HOOKS UP WITH WHAT HAD ALREADY  
4 BEEN DISCUSSED ABOVE. THAT'S ALL I WANTED TO SAY.  
5 THE COURT: ALL RIGHT. THANK YOU FOR POINTING THAT  
6 OUT.  
7 I'M GOING TO ASK SOMETHING. THE PORTION  
8 STARTING AT 5721 IS LINE WHAT?  
9 MR. LE BERTHON: LINE 11. ALTHOUGH, ACCORDING TO  
10 MR. PIUZE, PERHAPS IT SHOULD START AT LINE 7.  
11 MR. PIUZE: AS LONG AS I'VE GOT MR. LE BERTHON HERE,  
12 MAY I SUGGEST THE STIPULATION AS TO LIABILITY?  
13 MR. LE BERTHON: GIVE THAT A LOT OF THOUGHT.  
14 THE COURT: ALL RIGHT. ANYWAY, SO LINE 11 THROUGH  
15 AND INCLUDING --  
16 MR. LE BERTHON: THROUGH AND INCLUDING LINE 24, YOUR  
17 HONOR.  
18 THE COURT: THAT'S WHAT I THOUGHT. OKAY.

19 ALL RIGHT. LET ME THINK ABOUT THOSE. I'LL  
20 THINK ABOUT THEM OVER THE EVENING, AND THEY'LL BE EASY TO  
21 HANDLE TOMORROW.  
22 MR. PIUZE: AS TO THE FIRST ONE, I NEGLECTED TO SAY  
23 AUTHORIZED ADMISSION.  
24 THE COURT: I UNDERSTAND. YOU DIDN'T NEED TO MAKE  
25 THAT ARGUMENT. I WAS VERY MUCH AWARE OF THE POSITION.  
26 OKAY.  
27 NOW, TOMORROW, WHAT IS ON THE AGENDA FOR  
28 TOMORROW?

3577

1 MR. PIUZE: TOMORROW IS JOHNSON, READING THIS, A  
2 SHORT -- TWO SHORT CLIPS FROM "DEATH IN THE WEST," WHICH  
3 WE'VE AGREED TO. THOSE TWO SHORT CLIPS WON'T TAKE MORE  
4 THAN SEVEN MINUTES TOTAL RUNNING TIME. AND THAT'S THE  
5 EXTENT OF THE LIVE STUFF FROM THE PLAINTIFF.  
6 BUT I'VE ALERTED -- I'VE ASKED MR. LEITER TO  
7 THINK ABOUT THE FOLLOWING: THERE IS ALL KINDS OF DOCUMENTS  
8 HERE WHICH ARE SELF-AUTHENTICATING DOCUMENTS -- WE DON'T  
9 HAVE TO WORRY ABOUT WITNESSES TO AUTHENTICATE THEM. THEY  
10 RISE OR STAND ON THEIR OWN -- WHICH I WANT TO PUT IN, THAT  
11 HAVEN'T YET BEEN DISCUSSED. THERE MAY BE AS MANY AS THREE  
12 OR FOUR DOZEN OF THESE DOCUMENTS. WE USED 50 AS A ROUND  
13 NUMBER.  
14 AND I ASKED MR. LEITER WHETHER HE WANTED TO GO  
15 FORWARD WITH HIS LIVE TESTIMONY IMMEDIATELY AND WE CAN DEAL  
16 WITH THESE THINGS AS WE GO ALONG, OR WHETHER HE THOUGHT IT  
17 BETTER TO SQUARE AWAY THE DOCUMENT ISSUE BEFORE HE PUTS ON  
18 TESTIMONY.  
19 THE BALL IS IN MY COURT BECAUSE HE WANTS A  
20 LIST OF EXACTLY WHICH DOCUMENTS THEY ARE BEFORE HE  
21 RESPONDS. ALL OF THAT IS A LONG WAY OF SAYING I'LL  
22 PROBABLY TAKE THE MORNING, AND PROBABLY NO MORE, WITH LIVE  
23 TESTIMONY; AND THEN WE DON'T KNOW WHETHER THE AFTERNOON  
24 SHOULD BE DEVOTED TO THRASHING OUT DOCUMENTS YET OR WHETHER  
25 HE HAS GOT A WITNESS WHO IS STANDING BY, A LOCAL WITNESS.  
26 IT'S UP TO US TO SQUARE IT AWAY OVERNIGHT.  
27 THE COURT: I WOULD LIKE -- I KNOW YOU HAVEN'T HAD A  
28 CHANCE TO SAY ANYTHING, MR. LEITER. EXCUSE ME.

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1 LET ME EXPRESS MYSELF. I'D LIKE TO GET RIGHT  
2 ON WITH SOME LIVE TESTIMONY.  
3 DO YOU HAVE ANY MOTIONS?  
4 MR. LEITER: THAT'S WHAT I WAS GOING TO MENTION. WE  
5 WILL HAVE MOTIONS. THEY DON'T NECESSARILY HAVE TO BE DEALT  
6 WITH IMMEDIATELY. WE'LL HAVE MOTIONS THAT FOLLOW THE  
7 PLAINTIFF'S CASE.  
8 THE COURT: WHAT I CAN DO WITH YOUR MOTIONS --  
9 ANTICIPATING IN MY MIND WHAT THEY MIGHT BE -- IS JUST ALLOW  
10 YOU TO START YOUR CASE WITHOUT PREJUDICE TO THOSE AND FIND  
11 A CONVENIENT TIME TO GIVE YOU A REAL CHANCE TO DISCUSS THEM  
12 WITH ME.  
13 ARE YOU GOING TO BE READY TO START WITH A LIVE  
14 WITNESS TOMORROW?  
15 MR. LEITER: IF THAT'S YOUR HONOR'S WISH, WE'LL BE  
16 READY TO START WITH A LIVE WITNESS TOMORROW AFTER LUNCH.  
17 THE COURT: WHAT I'D LIKE TO DO, THEN, IS START WITH  
18 A LIVE WITNESS TOMORROW, GIVE YOU ALL DAY THURSDAY --  
19 FRIDAY MORNING YOU KNOW MY SITUATION -- AS FAR AS THE 25  
20 DOCUMENTS, WE'LL JUST DO IT. WE'LL DO IT IN AN EVENING OR  
21 AN AFTERNOON, SOMETHING LIKE THAT -- YOU KNOW MY SITUATION  
22 FRIDAY MORNING.  
23 I'M MORE THAN WILLING TO GIVE YOU FRIDAY

24 AFTERNOON, IF YOU WANT IT. HAVE YOU ALL DECIDED WHAT YOU  
25 WANT TO DO FRIDAY?  
26 MR. LEITER: THERE THE BALL IS IN OUR COURT. WE HAVE  
27 BEEN WAITING TO GET A SENSE OF EXACTLY WHEN OUR CASE WOULD  
28 BEGIN, WHAT OUR SITUATION IS WITH WITNESSES FROM OUT OF  
3579

1 TOWN.

2 ONCE WE GET PAST TOMORROW I THINK WE'LL BE IN  
3 A POSITION TO MAKE A RECOMMENDATION AS TO WHETHER WE OUGHT  
4 TO BE DARK FRIDAY AFTERNOON.

5 THE COURT: IT'S UP TO YOU, THE BALL IS IN YOUR  
6 COURT.

7 ON THAT, I'LL LET YOU MAKE THE CALL ON THAT.

8 I'LL SEE YOU TOMORROW MORNING. AND MEANWHILE, LET ME THINK  
9 ABOUT THIS.

10 THANK YOU, COUNSEL.

11

12 (AT 3:45 P.M. AN EVENING ADJOURNMENT WAS TAKEN  
13 UNTIL WEDNESDAY, APRIL 25, 2001 AT 8:45 A.M.)

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT NO. 308 HON. CHARLES W. MC COY, JR., JUDGE

4

5

RICHARD BOEKEN, )

6 )

PLAINTIFF, )

7 )

VS. ) CASE NO.

8 ) BC226593

PHILIP MORRIS, )

9 )

DEFENDANT. )

10 \_\_\_\_\_)

11

REPORTER'S CERTIFICATE

12

13 STATE OF CALIFORNIA )

) SS.

14 COUNTY OF LOS ANGELES )

15

16 I, CARMEN J. GARROD, CSR NO. 4009, OFFICIAL COURT  
17 REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
18 FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE  
19 FOREGOING PAGES COMPRISE A FULL, TRUE AND CORRECT  
20 TRANSCRIPTION OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED  
21 MATTER ON APRIL 24, 2001.

22

23 DATED THIS 24TH DAY OF APRIL 2001.

24

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\_\_\_\_\_  
CSR NO. 4009

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OFFICIAL COURT REPORTER

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